

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ATLAS FOUNDRY COMPANY, INC.,
AMERICAN NATIONAL CAN CO.,
ATLANTIC RICHFIELD COMPANY,
BELL PACKAGING CORPORATION,
and
WASTE MANAGEMENT
OF INDIANA, INC.,

Defendants.

Civil Action No. 1:97 CV 0015

Judge William C. Lee

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Marion/Bragg Landfill Superfund Site

in Grant County, Indiana ("the Site").

B. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or

responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

m. "Settling Defendants" shall mean Atlas Foundry Company, Inc., American National Can Co., Atlantic Richfield Company, Bell Packaging Corporation, and Waste Management of Indiana, Inc.

n. "Site" shall mean the Marion/Bragg Landfill Superfund site located in Grant County, Indiana.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund by Settling Defendants Atlas Foundry Company, Inc., American National Can Co., Atlantic Richfield Company, and Waste Management of Indiana, Inc.

a. Within 30 days of entry of this Consent Decree, Settling Defendants Atlas Foundry Company, Inc., American National Can Co., Atlantic Richfield Company, and Waste Management of Indiana, Inc. shall pay to the EPA Hazardous Substance Superfund the sums shown on Schedule 1, totalling \$588,000, in reimbursement of Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, the EPA Region and Site Spill ID Number 05-B9 and DOJ Case Number 90-11-3-251A. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Indiana following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Each of the aforementioned Settling Defendants shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and

Submissions).

b. Interest on Late Payments. In the event that any payment[s] required by Paragraph 4.a. are not received when due, Interest shall accrue on the unpaid balance from the date of lodging through the date of payment.

5. Payment of Past Response Costs to the EPA Hazardous Substance Superfund by Settling Defendant Bell Packaging Corporation.

a. Within 30 days of entry of this Consent Decree and on such later dates as provided in Schedule 2, Settling Defendant Bell Packaging Corporation shall pay to the EPA Hazardous Substance Superfund the sums shown on Schedule 2, totalling \$162,000, in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from thirty days after entry of this Consent Decree through the date of payment, except as provided in Paragraph 5.b. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, the EPA Region and Site Spill ID Number 05-B9 and DOJ Case Number 90-11-3-251A. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Indiana following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant Bell

Packaging shall send notice to EPA and DOJ that payment has been made in accordance with Section XI (Notices and Submissions).

b. Interest on Late Payments. In the event that any payment[s] required by Paragraph 5.a. are not received when due pursuant to Schedule 2, Interest shall accrue on the unpaid balance of such payment from the date of lodging through the date of payment.

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

6. Stipulated Penalty.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, the Settling Defendant defaulting in payment of such amounts (the "Defaulting Defendant") shall, in addition to the Interest required by Paragraphs 4.b. and 5.b., pay to EPA as a stipulated penalty \$ 5,000 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673. All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 05-B9, USAO File Number _____, and DOJ Case Number 90-11-3-251A.

Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XI (Notices and Submissions).

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Defaulting Defendant(s) of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. If the United States brings an action to enforce this Consent Decree, the Defaulting Defendant(s) shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. Payments made under Paragraphs 4.b., 5.b., 6, and 7 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Defaulting Defendant(s)'s failure to comply with the requirements of this Consent Decree.

9. The obligations of Settling Defendants Atlas Foundry Company, Inc., American National Can Co., Atlantic Richfield Company, and Waste Management of Indiana, Inc. to pay the amounts required under Section V, Paragraph 4.a. (Payment of Past Response Costs to the United States) (incorporating the sums

shown on Schedule 1, totalling \$588,000) owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more of the aforementioned Settling Defendants to make these payments required under this Consent Decree, the remaining defendants of the aforementioned Settling Defendants shall be responsible for such payments.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

11. Covenant Not to Sue by United States.

a. Except as specifically provided in Paragraph 12 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendants Atlas Foundry Company, Inc., American National Can Co., Atlantic Richfield Company, and Waste Management of Indiana, Inc., pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required of the aforementioned Settling Defendants by Section V, Paragraph 4 (Payment of Past Response Costs to the United States) and Section VI, Paragraph 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by the aforementioned Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to aforementioned Settling

Defendants and does not extend to any other person.

b. Except as specifically provided in Paragraph 12 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant Bell Packaging Corporation pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required of Settling Defendant Bell Packaging by Section V, Paragraph 5 (Payment of Past Response Costs to the United States) and Section VI, Paragraph 6(a) (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant Bell Packaging Corporation of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant Bell Packaging and does not extend to any other person.

12. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 11 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

- c. criminal liability;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

13. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

14. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

15. Nothing in this Consent Decree shall be construed to create any rights in, or grant or revive any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

16. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

17. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion

for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

18. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

X. RETENTION OF RECORDS

19. Until 5 years after the entry of this Consent Decree, each Settling Defendant, to the best of its ability, shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

20. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such

records or documents, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

21. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

- a. not altered, mutilated, discarded, destroyed or

otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

b. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

22. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-251A)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Director, Superfund Division
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

As to Settling Defendants:

Atlas Foundry Company, Inc.:

H. Joseph Certain, Esq.
Kiley, Kiley, Harker
300 W. 3rd Street
Marion, IN 46952-0899

American National Can Co.:

Tim Guerra, Esq.
American National Can Co.
8770 W. Bryn Mawr Ave. 14J
Chicago, IL 60631-3542

Atlantic Richfield Company:

Neal Brody, Esq.
ARCO -- Legal
515 S. Flower Street
Los Angeles, CA 90051

Bell Packaging Corporation:

John Bell
Bell Packaging Corporation
13155 Noel Road, Suite 900
Dallas, TX 75240-5060

Waste Management of Indiana, Inc.:

Lisa Zebowitz, Esq.
Waste Management, Inc.
3003 Butterfield Road
Oak Brook, IL 60521

XII. RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIII. INTEGRATION/APPENDICES

24. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

25. This Consent Decree shall be lodged with the Court for

a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

26. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

27. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

28. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

29. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer

supports entry of the Consent Decree.

30. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

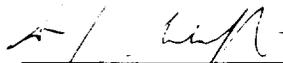
SO ORDERED THIS

27 DAY OF March, 1997

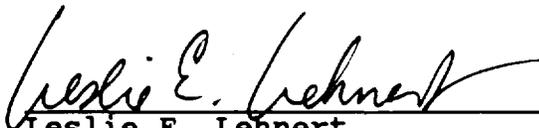

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Foundry Company, Inc., et al., (N.D. Ind.), relating to the Marion/Bragg Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA



Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



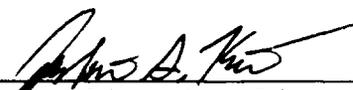
Leslie E. Lehnert
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

United States Attorney
for the Northern District of
Indiana

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Foundry Company, Inc., et al., (N.D. Ind.), relating to the Marion/Bragg Landfill Superfund Site.



William E. Muno
Director, Superfund Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Jacqueline S. Kline
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Atlas Foundry Company, Inc., et al., (N.D. Ind.), relating to the Marion/Bragg Landfill Superfund Site.

FOR THE SETTLING DEFENDANT
(Please type or print, except for signature line for Officer)

Date: Dec. 9, 1996

WASTE MANAGEMENT OF INDIANA, L.L.C.
c/o Lisa S. Zebovitz

Name of Settling Defendant

3003 Butterfield Road
Oak Brook, IL 60521

Address

630-572-2480

Telephone Number

WILLIAM B. TERRY

Name of Officer



Signature of Officer

President

Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Name

Address

Address

Telephone

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.

SCHEDULE 1

Amounts payable to the United States from Atlas Foundry Company, Inc., American National Can Co., Atlantic Richfield Company, and Waste Management of Indiana, Inc., exclusive of any Interest

<u>Settling Defendant</u>	<u>Payment Amounts</u>
Atlas Foundry Company, Inc.	\$72,000
American National Can Co.	\$172,000
Atlantic Richfield Company	\$172,000
Waste Management of Indiana, Inc.	\$172,000

SCHEDULE 2

Amounts payable to the United States from Bell Packaging Corporation, exclusive of any Interest

<u>Settling Defendant</u>	<u>Payment Amounts</u>	<u>Payment Dates</u> (following entry of consent decree)
Bell Packaging	\$40,500	30 days after entry
	\$40,500	210 days after entry
	\$40,500	390 days after entry
	\$40,500	570 days after entry